

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MICHAEL TAYLOR)	
Claimant)	
VS.)	
)	Docket No. 231,046
RUSKIN MFG. TOMKINS INDUSTRIES)	
Respondent)	
AND)	
)	
INSURANCE CO STATE OF PENNSYLVANIA)	
Insurance Carrier)	

ORDER

Respondent requested Appeals Board review of Administrative Law Judge Jon L. Frobish's June 24, 1999, preliminary hearing Order.

ISSUES

The Administrative Law Judge granted claimant's preliminary hearing requests for medical treatment and temporary total disability benefits. The Administrative Law Judge found that claimant suffered bilateral upper extremity injuries while performing repetitive work activities for respondent.

Respondent argues that claimant's current bilateral upper extremity injuries are not the result of his work activities while employed by the respondent. But his injuries are due to claimant's employment activities and injuries he received in a fight after respondent laid claimant off of work on March 16, 1998. Further, respondent contends claimant is not in need of medical treatment and is not temporarily and totally disabled.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The Appeals Board has jurisdiction to review the Administrative Law Judge's finding that claimant's bilateral upper extremity injuries are related to his work activities while employed by the respondent. But the issues raised by the respondent that question

claimant's need for medical treatment and payment of temporary total disability benefits are not issues subject to Appeals Board review at this stage of the proceedings. See K.S.A. 1998 Supp. 44-534a.

The Appeals Board finds, for preliminary hearing purposes, that claimant has proven the repetitive work activities he performed while employed by the respondent resulted in injuries to his upper extremities. After respondent laid claimant off on March 16, 1998, he continued to work as a cook and a kitchen manager at a local country club where he also worked while employed by the respondent. But claimant testified the work activities at the country club were not repetitive, and he was not required to do any heavy lifting. Claimant further testified his upper extremity symptoms were not aggravated or accelerated by those work activities. Claimant admitted his involvement in a fight in March of 1999, and that he received injuries as a result of the fight. But there is no evidence these injuries either aggravated or accelerated his bilateral upper extremity symptoms.

While claimant was working for the respondent, the respondent provided medical treatment for claimant's bilateral upper extremity injuries. Orthopedic surgeon, William L. Dillon, M.D., was one of the physicians who provided conservative treatment for these injuries. Dr. Dillon's medical progress notes were admitted into evidence at the preliminary hearing. Because a full course of conservative treatment failed to provide claimant with relief, Dr. Dillon recommended surgical intervention to relieve claimant from his persistent problems including his bilateral epicondylitis condition.

The Appeals Board, therefore, affirms the Administrative Law Judge's preliminary hearing Order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Jon L. Frobish's June 24, 1999, preliminary hearing Order should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1999.

BOARD MEMBER

c: Carlton W. Kennard, Pittsburg, KS
Garry W. Lassman, Pittsburg, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director